IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA.

WRIT PETITION NO. 111 OF 2006

MISS MILAGRINA D'SOUZA,
D/O. LATE DIOGO ANTONIO D'SOUZA,
MAJOR, SPINSTER, LANDLADY,
RESIDING AT CARRASWADDO,
MAPUSA, BARDEZ, GOA. .... PETITIONER

Versus

SHRI VASANT V. NAGVEKAR,
MAJOR, MARRIED, BUSINESSMAN,
RESIDING AT CARRASWADO,
MAPUSA, BARDEZ, GOA. .... RESPONDENTS

Shri Sudin M.S. Usgaonakar, Advocate for the Petitioner.
Shri J.P. Mulgaonkar, Advocate for the Respondent.

CORAM: **SMT. RANJANA DESAI, J**.

DATE : **12h July, 2006**

ORAL ORDER :

This petition is directed against the order dated 4/10/2005 in Misc. Civil Appeal No.85/2003. By the impugned order the lower appellate Court has set aside the ex-parte decree passed by the trial court and the order dated 15/01/1996 to proceed ex-parte against the respondent. The respondent has been permitted to participate in the proceeding. Costs of Rs.1,000/- have been imposed on him. The petitioner is the original plaintiff.

2. I have heard Mr. Sudin M.S. Usgaonkar, learned Counsel appearing for petitioner. He submitted that the respondent has given no explanation for extraordinarily long delay in filing application for setting aside ex-parte judgment and decree. He submitted that in another case pending between the same parties, the respondent has during the relevant period remained present and prosecuted it. However, he did not remain present in the instant suit. He cannot be therefore heard, to say that due to alcoholism, there was lapse of memory and therefore, he could not prosecute the instant suit. Learned Counsel submitted that therefore, this Court should set aside the impugned order.

3. In the peculiar facts and circumstances of the case, in my opinion in the interest of justice no interference is necessary with the impugned order. As stated by Mr. Usgaonkar, if the respondent was prosecuting the other proceedings, he ought to have been diligent in prosecuting the present suit. But once the lower appellate court has exercised its discretion and set aside the ex-parte order, I do not deem it proper to interfere with it. Ex-parte decrees are always vulnerable. To secure aids of justice, the learned judge has set it aside after saddling the respondent with costs. No fault could be found with such order. In the

facts of this case however, I feel that costs of Rs. 1,000/- are too low. The respondent must be saddled with heavy costs. Hence the following order:

4. The judgment and decree dated 31/07/2000 is quashed and set aside on the respondent paying to the petitioner a sum of Rs. 10,000/- as costs instead of Rs. 1,000/- as ordered by the lower appellate court. With this modification the impugned order is maintained. Writ Petition is disposed of. Costs of Rs. 10,000/- will be paid within two months from today. Payment of costs shall be condition precedent to the setting aside of judgment and decree dated 31/7/2000 and order to proceed ex-parte dated 15/01/1996.

5. Considering the fact that the suit is of the year 1994, the trial court is directed to hear and dispose of the suit as expeditiously as possible and at any rate within a period of one year from the date of the receipt of this order.

SMT. RANJANA DESAI, J.

NH/-